

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 01 AND SUBREGION 34

BOB'S TIRE CO., INC. AND B.J.'S  
SERVICE COMPANY, INC. (A JOINT  
EMPLOYER)

Case No. 01-CA-285355

and

UNITED FOOD AND COMMERCIAL  
WORKERS INTERNATIONAL UNION,  
LOCAL 328

SECOND COMPLAINT AND NOTICE OF HEARING

This Second Complaint and Notice of Hearing is based on a charge filed by the United Food and Commercial Workers International Union, Local 328 (the Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Board's Rules and Regulations and alleges that Bob's Tire Co., Inc. (Respondent Bob's) and B.J.'s Service Company, Inc. (Respondent BJ's) (a Joint Employer) (collectively Respondents), violated the Act, as described below. The first Complaint and Notice of Hearing in this proceeding issued on April 22, 2022.

1. (a) The charge in this proceeding was filed by the Union on October 28, 2021, and a copy was served on Respondent Bob's by U.S. Mail on October 29, 2021.

(b) The amended charge in this proceeding was filed by the Union on March 22, 2022, and a copy was served on Respondents by electronic mail on March 28, 2022.

2. (a) At all material times, Respondent Bob's, a Massachusetts corporation with an office and place of business located at 55 Brook Street, New Bedford, Massachusetts (its facility), has been engaged in the business of tire recycling.

(b) During the 12-month period ending March 31, 2022, Respondent Bob's purchased and received at its facility goods valued in excess of \$50,000 directly from points located outside the Commonwealth of Massachusetts.

(c) During the 12-month period ending March 31, 2022, Respondent Bob's sold and shipped from its facility goods valued in excess of \$50,000 to customers outside the Commonwealth of Massachusetts.

(d) At all material times, Respondent BJ's, a Massachusetts corporation with an office and place of business located at 222 Herman Melville Blvd., New Bedford, Massachusetts, has been engaged in the business of providing temporary employees to companies for varying periods of time.

(e) During the 12-month period ending March 31, 2022, Respondent BJ's provided temporary employment services valued in excess of \$50,000 in States other than the Commonwealth of Massachusetts.

3. (a) At all material times, Respondent Bob's and Respondent BJ's have been parties to a contract which provides that Respondent BJ's is the agent for Respondent Bob's in connection with hiring the employees identified in paragraph 9 at Respondent Bob's facility.

(b) At all material times, Respondent Bob's has possessed control over the labor relations policy of Respondent BJ's and has administered a common labor policy with Respondent BJ's for the employees identified in paragraph 9 below.

(c) At all material times, Respondent BJ's and Respondent Bob's have been joint employers of the employees identified in paragraph 9 below.

4. At all material times, Respondents have been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

5. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

6. At all material times, the following individuals have held the positions set forth opposite their respective names and have been supervisors of Respondents within the meaning of Section 2(11) of the Act and agents of Respondents within the meaning of Section 2(13) of the Act:

(b) (6), (b) (7)(C)  
(b) (6), (b) (7)(C)  
(b) (6), (b) (7)(C)

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(b) (6), (b) (7)(C), Respondent Bob's  
(b) (6), (b) (7)(C), Respondent Bob's  
(b) (6), (b) (7)(C) Respondent BJ's

7. About (b) (6), (b) (7)(C), 2021, the (b) (6), employees named and listed below in paragraph 9 concertedly protested their terms and conditions of employment by raising their concerns to the Employer about (b) (6), (b) (7)(C) to employees.

8. About (b) (6), (b) (7)(C) 2021, Respondent Bob's, by (b) (6), (b) (7)(C) at Respondent Bob's (b) (6), (b) (7)(C), disparaged the Union and made statements of futility to employees.

9. About (b) (6), (b) (7)(C), 2021, Respondents discharged the following (b) (6), employees:

(b) (6), (b) (7)(C)

10. Respondents engaged in the conduct described above in paragraph 9 because the named employees engaged in the concerted activities described above in paragraph 7, and to discourage employees from engaging in these or other protected concerted activities.

11. Respondents engaged in the conduct described above in paragraph 9 because the named employees joined and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

12. By the conduct described in paragraphs 8, 9, and 10, Respondents have been interfering with, restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

13. By the conduct described in paragraphs 9 and 11, Respondents have been discriminating in regard to hire or tenure of terms and conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

14. Respondent's unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### **SPECIAL REMEDIES**

WHEREFORE, as part of the remedy for the unfair labor practices alleged above, the General Counsel seeks an order requiring that, at a meeting or meetings scheduled to ensure the widest possible attendance, Respondent Bob's representative (b) (6), (b) (7)(C) read the notice to employees in English, (b) (6), (b) (7)(C) on work time and in the presence of a Board agent. Alternatively, the General Counsel seeks an order requiring that Respondent Bob's promptly have a Board agent read the notice to employees during work time in the presence of Respondent Bob's supervisors and agents identified above in paragraph 6. The General Counsel further seeks an order requiring the training of owners, supervisors and managers regarding employee rights under the Act.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged, including an order requiring that the discriminatees be made whole, including reasonable consequential damages incurred as a result of the Respondent's unlawful conduct.

#### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer

must be **received by this office on or before June 21, 2022.**<sup>1</sup> Respondent also must serve a copy of the answer on each of the other parties.

The answer must be filed electronically through the Agency's website. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

### **NOTICE OF HEARING**

**PLEASE TAKE NOTICE THAT on Tuesday, July 12, 2022, at 10:00 a.m. at the Thomas P. O'Neill Jr. Federal Building, 10 Causeway Street, Suite 601, Boston, Massachusetts**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations

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<sup>1</sup> Respondent Bob's Answer to the First Complaint was timely filed.

Board. At the hearing, Respondents and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint.

The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: June 6, 2022

A handwritten signature in black ink, appearing to read "Laura Sacks", written in a cursive style.

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Laura A. Sacks, Regional Director  
National Labor Relations Board  
Region 01

Attachments

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**NOTICE**

Case 01-CA-285355

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

**(b) (6), (b) (7)(C)**

Bob's Tire Co., Inc.  
29 Brooks Street  
New Bedford, MA 02746  
Email: [info@bobstireco.com](mailto:info@bobstireco.com)

**(b) (6), (b) (7)(C)**

BJ's Service Company, Inc.  
222 Herman Melville Blvd  
New Bedford, MA 02740-7344  
Email: **(b) (6)**@bjstempservice.com

United Food and Commercial Workers  
International Union, Local 328  
278 Silver Spring Street  
Providence, RI 02904-2593  
Regular Mail

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## Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: [www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules\\_and\\_regs\\_part\\_102.pdf](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf).

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at [www.nlr.gov](http://www.nlr.gov), click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

**Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement.** The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

### I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

### II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered

**in evidence.** If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

### III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

**United States of America**  
**Before the National Labor Relations Board**  
**Region 01 and Subregion 34**

BOB'S TIRE CO., INC. AND B.J.'S SERVICE  
COMPANY, INC.

Case: 01-CA-285355

and

UNITED FOOD AND COMMERCIAL  
WORKERS INTERNATIONAL UNION  
LOCAL 328

**ANSWER OF B.J.'S SERVICE COMPANY, INC. TO  
SECOND COMPLAINT AND NOTICE OF HEARING**

Respondent B.J.'s Service Company, Inc. (hereafter "Respondent BJs") hereby responds to the Second Complaint and Notice of Hearing received electronically June 6, 2022, and says as follows:

1.

- a) Paragraph 1(a) does not pertain to Respondent BJs and therefore, no answer is required.

To the extent a response is required, Respondent BJs neither admits nor denies as Respondent BJs lacks knowledge or information sufficient to form a belief as to the truth thereof. To the extent a response is required, the allegations are denied.

- b) As to the first clause Respondent BJs neither admits nor denies as Respondent BJs lacks knowledge or information sufficient to form a belief as to the truth thereof. As to the second clause Respondent BJs denies it was served with an amended charge by electronic mail on March 28, 2022.

2.

- a) Respondent BJs neither admits nor denies as Respondent BJs lacks knowledge or information sufficient to form a belief as to the truth thereof. To the extent a response is required, the allegations are denied.
- b) Respondent BJs neither admits nor denies as Respondent BJs lacks knowledge or information sufficient to form a belief as to the truth thereof. To the extent a response is required, the allegations are denied.
- c) Respondent BJs neither admits nor denies as Respondent BJs lacks knowledge or information sufficient to form a belief as to the truth thereof. To the extent a response is required, the allegations are denied.
- d) Admit.
- e) Admit.

3.

- a) The allegations in Paragraph 3(a) set forth a series of legal conclusions and therefore an answer is not required, but to the extent an answer is required Respondent BJs denies.
- b) The allegations in Paragraph 3(b) set forth a series of legal conclusions and therefore an answer is not required, but to the extent an answer is required Respondent BJs denies.
- c) The allegations in Paragraph 3(c) set forth a series of legal conclusions and therefore an answer is not required, but to the extent an answer is required Respondent BJs denies.

4. The allegations in Paragraph 4 set forth a series of legal conclusions and therefore an answer is not required, but to the extent an answer is required Respondent BJs denies.

5. Neither admit nor deny the allegations of this paragraph in that Respondent BJs lacks knowledge or information sufficient to form a belief as to the truth thereof to either admit or

deny the allegations contained in Paragraph 5 of the Complaint. To the extent Paragraph 5 seeks information regarding the statutory status of the charging party it is more appropriately directed at the charging party.

6. As to the portion of the allegation regarding Bob's Tire Co., Inc. (hereafter "Respondent Bob's"): Respondent BJs neither admits nor denies as Respondent BJs lacks knowledge or information sufficient to form a belief as to the truth thereof, and to the extent a response is required, the allegations are denied. Denied to the extent that Section 2(13) of the Act does not define "agent." As to the portion of the allegation regarding Respondent BJs: Admit.
7. The allegations in Paragraph 7 set forth a series of legal conclusions and therefore an answer is not required, but to the extent an answer is required Respondent BJs denies.
8. Paragraph 8 does not pertain to Respondent BJs and therefore, no answer is required. To the extent a response is required, Respondent BJs neither admits nor denies as Respondent BJs lacks knowledge or information sufficient to form a belief as to the truth thereof. To the extent a response is required, the allegations are denied.
9. Respondent BJs denies it discharged said employees.
10. The allegations in Paragraph 10 set forth a series of legal conclusions and therefore an answer is not required, but to the extent an answer is required Respondent BJs denies.
11. The allegations in Paragraph 11 set forth a series of legal conclusions and therefore an answer is not required, but to the extent an answer is required Respondent BJs denies.
12. Respondent BJs denies that it committed any unfair labor practices. The allegations in Paragraph 12 set forth a series of legal conclusions and therefore an answer is not required, but to the extent an answer is required Respondent BJs denies.

13. Respondent BJs denies that it committed any unfair labor practices. The allegations in Paragraph 13 set forth a series of legal conclusions and therefore an answer is not required, but to the extent an answer is required Respondent BJs denies.
14. Respondent BJs denies that it committed any unfair labor practices. The allegations in Paragraph 14 set forth a series of legal conclusions and therefore an answer is not required, but to the extent an answer is required Respondent BJs denies.

### **AFFIRMATIVE DEFENSES**

1. The Complaint is barred by the doctrine of unclean hands.
2. The Complaint is barred by the doctrine of waiver.
3. The Complaint is barred by the doctrine of estoppel.
4. The Complaint is barred by the doctrine of laches.
5. The Complaint is barred by the doctrine of equitable estoppel.
6. The Complaint is barred in whole or in part by the Union's own conduct.
7. The Complaint is barred by abuse of process.
8. The Complaint is barred in whole or in part by violation of 18 U.S.C. §1001.
9. The Complaint does not state facts sufficient to constitute an unfair labor practice or a violation of the Act.
10. The allegations of the Complaint do not support recovery under the National Labor Relations Act because some or all of them fail to state a claim.
11. Some or all of the allegations of the Complaint fall outside the scope of the underlying charges and said allegations are barred.
12. Complainants have not satisfied the administrative prerequisites to bringing some or all of the alleged actions.

13. Respondent BJs denies all allegations not expressly admitted.
14. Respondent BJs at all times relevant acted in good faith.
15. Any actions taken by Respondent BJs were taken for lawful business reasons.
16. Assuming, *arguendo*, any allegation in the Complaint is found to be a violation, it is a *de minimis* violation of the Act to warrant the finding of an unfair labor practice or the issuance of a remedial order.
17. Assuming, *arguendo*, any allegation in the Complaint is found to be a violation, the remedy requested by the General Counsel is inappropriate as a matter of law.
18. The Complaint issued, in whole or in part, without substantial justification.
19. Some or all of the claims asserted in the Complaint are barred as against Respondent BJs by the six month statute of limitations set forth in § 10(b) of the NLRA.
20. The Complaint is barred by any other matter constituting an avoidance or affirmative defense.
21. Respondent BJs reserves the right to assert additional affirmative defenses in this matter prior to trial.

Date: June 20, 2022

Respectfully submitted,  
B.J.'s Service Company, Inc.  
By its attorney,

/s/ John F. Whiteside, Jr.  
John F. Whiteside, Jr.  
Law Office of John F. Whiteside, Jr., P.C.  
678 State Road  
Dartmouth, MA 02747  
(508) 991-3333  
BBO #646541  
[john@jwhiteside.com](mailto:john@jwhiteside.com)

## CERTIFICATE OF SERVICE

I, John F. Whiteside, Jr., hereby certify that on the 20<sup>th</sup> day of June 2022, the foregoing Answer and Affirmative Defenses of B.J.'s Service Company, Inc. to the Second Complaint was filed via e-file in accordance with Section 102.5 of the Board's Rules and Regulations with:

Laura A. Sachs  
Regional Director  
National Labor Relations Board  
Region 1  
Thomas P. O'Neill Federal Building  
10 Causeway St., Room 601  
Boston, MA 02222

and served via e-mail upon:

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/s/ John F. Whiteside, Jr.  
John F. Whiteside, Jr.